Supreme Court, U.S.
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No. 87-1480

In The
Supreme Court of the United States
October Term, 1987

THE WINNEBAGO TRIBE OF NEBRASKA,
a federally recognized Indian Tribe,
Petitioner,

v.

DEPARTMENT OF REVENUE
OF THE STATE OF IOWA,
(Iowa Department of Revenue)

and

INVESTMENT FINANCE MANAGEMENT CO., INC.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

RESPONDENT IOWA DEPARTMENT OF REVENUE BRIEF IN OPPOSITION

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QUESTION PRESENTED

1. Whether the Federal District Court had original jurisdiction to remove a garnishment action from the Iowa State District Court between the Iowa Department of Revenue, Investment Finance Management Co., Inc., a Florida corporation and the Winnebago Tribe of Nebraska, an Intervenor?

PARTIES TO THE PROCEEDING

The caption contains the names of all parties to the action that participated in the United States Court of Appeals for the Eighth Circuit.[1] The original litigation was a garnishment action between the Iowa Department of Revenue and Investment Finance Management Co., Inc., a Florida corporation. The Winnebago Tribe of Nebraska entered the litigation as an Intervenor claiming that it owned a bank account that was in the name of Investment Finance Management Co., Inc.

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[1]The Sloan State Bank, 322 Evans, Sloan, Iowa, was a party to the District Court action as garnishee and holder of bank accounts in the name of Investment Finance Management Co., Inc. which are the subject of this action. The Sloan State Bank has not participated in this case and apparently claims no interest in the money held in the Investment Finance Management bank accounts.

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STATEMENT OF THE CASE

The Iowa Department of Revenue (Department) brought a garnishment action against Investment Finance Management Co., Inc. (IFM), a Florida corporation, for unpaid Iowa sales tax. IFM had failed to protest an Iowa sales tax assessment of $243,437.38. The Department of Revenue action sought to garnish $53,177.90 deposited to IFM's account in the Sloan State Bank of Sloan, Iowa. The notice of garnishment and interrogatories were filed in the Iowa District Court for Woodbury County on February 5, 1986. The notice of garnishment and interrogatories named IFM as the defendant and the Sloan State Bank as the defendant garnishee. A further Notice to Defendant of Garnishment dated February 13, 1986, also named IFM as the defendant and the Sloan State Bank as defendant garnishee (State Add. A).

The Winnebago Tribe of Nebraska (Tribe) intervened as the claimed owner of the Sloan State Bank funds and removed the action to the United States District Court for the Northern District of Iowa under 28 U.S.C. § 1441(b) (1982) with claimed original question jurisdiction predicated upon 28 U.S.C. §§ 1331 and 1362 (1982).

The Tribe simultaneously filed a Motion to Dismiss in the federal court. The District Court, the Honorable Donald E. O'Brien, Chief Judge, sustained the Tribe's Motion to Dismiss based on a finding that the federal court lacked derivative jurisdiction and the state court lacked original jurisdiction. App. 5.

On appeal, the United States Court of Appeals for the Eighth Circuit reversed. The Eighth Circuit held

that there was no basis for removal from state court because the only basis claimed for removal is a federal question and because the only federal question that may be involved is an exclusive federal question. The Court of Appeals held that federal question jurisdiction does not exist merely because an Indian tribe is a party or because the action involves Indian property or contracts. App. 4.

REASONS WHY THE PETITION SHOULD BE DENIED

I. The United States Court of Appeals decision in this case is correct and does not conflict with prior decisions of this Court.

The decision below should not be reviewed because the case merely involves a state court garnishment action and ownership of a bank account. Simply stated the issue is whether Investment Finance Management Co., Inc. (IFM) owned a bank account held in its name at the Sloan State Bank, Sloan, Iowa. The Winnebago Tribe of Nebraska (Tribe) claims it is the owner of the $53,177.90 held in the IFM account at the Sloan State Bank. The decision of the Eighth Circuit correctly remanded the Iowa Department of Revenue's garnishment action back to the state court to determine the ownership of IFM's Sloan State Bank account.

Under the "well-pleaded complaint rule," federal jurisdiction exists to support removal only when a federal question is presented on the face of the complaint. *Caterpillar, Inc. v. Williams*, 482 U.S. —, —, 107 S.Ct. 2425,

2429 (1987), decided June 9, 1987, clearly reaffirmed that principle.

> The presence or absence of federal-question jurisdiction is governed by the "well-pleaded complaint rule," which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint. *See Gully v. First National Bank*, 299 U.S. 109, 112-113, 57 S.Ct. 96, 97-98, 81 L.Ed. 70 (1936). The rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law.

482 U.S. at —, 107 S.Ct. at 2429.

The "complaint" which precipitated the present litigation was merely a "Notice to Defendant of Garnishment." (Respondent's Appendix p. 1) Clearly the complaint (Notice to Defendant of Garnishment) shows that this case was based exclusively on state statutes. The complaint did not rely in any manner on federal law, treaties or the United States Constitution. The Winnebago Tribe of Nebraska was not even named as a party. Federal law formed no element of the Department's state court action. No authority exists under which the state could have brought its garnishment action in federal court. The garnishment notice did not state a federal cause of action. Therefore under *Caterpillar, Inc. v. Williams, supra*, the instant case was not subject to removal.

That the decision below is clearly correct is also shown by the Court's recent decision in *Oklahoma Tax Commission v. Graham*, — U.S. —, 108 S.Ct. 481 (1987).

This Court there vacated a decision which had dismissed a removed case brought against an Indian Tribe on the ground of exclusive federal jurisdiction, *Oklahoma ex rel. Oklahoma Tax Commission v. Graham*, 822 F.2d 951 (10th Cir. 1987), and remanded the case for reconsideration in light of *Caterpillar, Inc. v. Williams*.

The Tribe claims that the decision below is inconsistent with prior decisions of this Court. The Tribe alleges that the decision is inconsistent with the exclusive federal question jurisdiction (or complete pre-emption) doctrine discussed by this Court in *Avco Corp. v. Aero Lodge I. A. M. & A. W.*, 390 U.S. 557 (1968). The facts in that case are so different from the instant case that there is no conflict regarding exclusive federal question jurisdiction. In *Avco Corp.*, this Court held that an action arising under § 301 of the Labor Management Relations Act of 1947 is controlled by federal substantive law even if it is brought in a state court. In the instant case, the Iowa Department of Revenue merely initiated a garnishment action against Investment Finance Management Co., Inc. (a Florida corporation), in an Iowa district court.

The Tribe's argument ignores the well-pleaded complaint rule of *Caterpillar, Inc. v. Williams*. The petition also erroneously assumes that this case is in fact a case within the exclusive jurisdiction of federal courts. Pet. p. 5. The Court of Appeals instead held that the state court would be required to dismiss the action only if it determined either that the Tribe owned the account or that the suit was really an attempt to tax the Tribe. App. 4.

The Tribe's attempt to establish the existence of a significant question concerning removal of exclusive federal question cases also fails because Congress has subsequently addressed the topic in 28 U.S.C. § 1441(e) (West Supp. 1987).[1] That statute applies to cases filed after June 18, 1986, and was not applied to this case filed before that date.

The Tribe's contention that the decision below conflicts with this Court's decisions in *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759 (1985), *California v. Cabazon Band of Mission Indians*, — U.S. —, 107 S.Ct. 1083 (1987), and *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973), is erroneous. The above quoted cases are clearly not relevant to the present proceeding. As can be seen from the face of the Department's Notice of Garnishment and Interrogatories (State Add. A), the Winnebago Tribe of Nebraska was not even named as a defendant to the Department's garnishment action.

The decision of the Court of Appeals was fully correct and indeed dictated by recent decisions of this Court. Therefore no need exists for this Court to reexamine the removal issue.

II. There is no substantial federal question raised in the context of this case.

The presence or absence of federal-question jurisdiction is governed by the "well-pleaded complaint rule,"

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[1] That section states:

> The court to which such civil action is removed is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.

which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint. *Caterpillar Inc. v. Williams*, 482 U.S. —, —, 107 S.Ct. 2425, 2429 (1987). An examination of the Department's Notices to Defendant of Garnishment, Add. A, clearly shows that no federal question has been presented to the Court. *Gully v. First National Bank*, 299 U.S. 109, 112-113 (1936). As a result, the decision of the United States Court of Appeals for the Eighth Circuit does not raise a substantial federal question.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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IN THE DISTRICT COURT OF THE
STATE OF IOWA IN AND FOR
WOODBURY COUNTY, IOWA

DEPARTMENT OF REVENUE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	NOTICE TO
INVESTMENT FINANCE	)	DEFENDANT
MANAGEMENT CO., INC.,	)	OF
	)	GARNISHMENT
Defendant,	)	
	)	NO. 93851-C
and	)	
	)	
SLOAN STATE BANK,	)	
	)	
Garnishee.	)	

TO THE ABOVE NAMED DEFENDANT *Investment Finance Management Co., Inc.*

You are hereby notified that by virtue of a Distress Warrant issued by the Department of Revenue of the State of Iowa, which demands of you the sum of $243,437.38, the Sheriff of Woodbury County did on the 20th day of January 1986, garnish Sloan State Bank, supposed debtor of Defendant, and took its answer.

You are now notified that unless you appear, contest and defend against said garnishment proceedings in the District Court of the State of Iowa, in and for Woodbury County, Iowa, in the city of Sioux City, Iowa, at the Woodbury County Courthouse, within ten (10) days from and after the completed service of this notice upon you, a judgment may be rendered condemning $53,177.90 in the hands of the Sloan State

Bank belonging to you, as shown by the answer of said defendant garnishee, and the same will be dealt with according to law for the use of the plaintiff herein.

Witness my hand this *13* day of February, 1986.

BY ...../s/.....
JOHN WATERS